



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

February 19, 2015

Memorandum for: Deputy Commissioner, Trials

CHAN

Re: **Police Officer Timothy Kraft**
Tax Registry No. 930504
34 Precinct
Disciplinary Case No. 2013-10071

The above named member of the service appeared before Assistant Deputy Commissioner Claudia Daniels-DePeyster on October 8, 2014 and was charged with the following:

DISCIPLINARY CASE NO. 2013-10071


1. Said Police Officer Timothy Kraft, assigned to the 34th Precinct, while on duty on or about September 8, 2012, at approximately 0055 hours, in the vicinity of [REDACTED], in New York County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he searched Person A's vehicle without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT -
PROHIBITED CONDUCT**

In a Memorandum dated December 29, 2014, Assistant Deputy Commissioner Claudia Daniels-DePeyster found the Respondent Guilty of Specification No. 1 in Disciplinary Case No. 2013-10071. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

I have considered the totality of issues and circumstances in this matter and deem that a lesser penalty is warranted. Therefore, Police Officer Kraft shall forfeit five (5) vacation days, as a disciplinary penalty.


William J. Bratton
Police Commissioner



POLICE DEPARTMENT

December 29, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Timothy Kraft
Tax Registry No. 930504
34 Precinct
Disciplinary Case No. 2013-10071

The above-named member of the Department appeared before me on October 8, 2014, charged with the following:

1. Said Police Officer Timothy Kraft, assigned to the 34th Precinct, while on duty on or about September 8, 2012, at approximately 0055 hours, in the vicinity of [REDACTED], in New York County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he searched Person A's vehicle without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT
PROHIBITED CONDUCT

The Civilian Complaint Review Board (CCRB) was represented by Paul Scotti, Esq., Respondent was represented by John P. Tynan, Esq.

Respondent through his counsel entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty as charged.

SUMMARY OF EVIDENCE PRESENTED

Respondent is charged with engaging in conduct prejudicial to the good order, efficiency or discipline of the Department in that he searched Person A's vehicle without sufficient legal authority. Upon review of the record in its entirety, this tribunal finds that Respondent engaged in the charged misconduct.

The following facts are not in dispute. On or about September 8, 2012 at approximately midnight, Person A was at a bar and grill with coworkers. He left that establishment and stopped his vehicle in front of a bodega in the vicinity of [REDACTED] [REDACTED] to get a drink. He parked his vehicle by a fire hydrant and his windows were rolled down at the time that he exited his vehicle. The music emanating from the car was loud. The bodega did not have what he wanted and he left. When he got back to his car, he saw the officers and informed them that the car belonged to him. He was eventually issued two summonses by Respondent and his partner, then Police Officer Stall-now Police Officer Schneider. The summonses were for the loud music and for parking at a fire hydrant. In dispute is whether Respondent had a legally sufficient basis for searching Person A's vehicle.

As they were writing the summonses, Person A said Respondent had his flashlight out and inspected the vehicle from outside. Respondent then opened his driver side door and sat down. Person A said he never gave Respondent permission to either enter his ehicle or to search it. Respondent began to open Person A's glove compartment, look on the floor in the front and the back, and was removing things from his glove compartment and center console. Respondent then popped the trunk. At some point, Person took out his cell phone and began to record the incident. He is heard on the video of the incident

questioning the search of his vehicle and the opening of the trunk. Respondent is heard telling Person A where he can pick up a copy of the voucher (See CCRBX 1A and B, transcript and recording of Person A's interview, respectively, and CCRBX 2, videotapes of the incident).

Person A said he was eventually told that his vehicle was being seized. He was with coworkers who were following in a separate vehicle and who came over to see what was going on. Once his car was taken, he drove in the car with his coworkers and went to the station house to try to retrieve his car. He was told that he had to wait until his court date to recover his vehicle.

Respondent did not deny the account of the facts made by Person A, except to say that he did not view what he did in Person A's car as a search. He said that what he did was different than an inventory search because he attempted to remove all of the items from the car and instead of vouchering them; he tried to give them to the complainant and take the car. He acknowledged, however, that if he found guns or drugs during the process of removing items, he would make an arrest. He stated that Sergeant Castillo arrived on the scene and he advised the sergeant that he was vouchering the car as arrest evidence. Castillo told him that he did not want property released on the scene because of crowd control issues, so he directed Respondent to do it at the station house and so Respondent left the scene with the vehicle. Person A said his items were placed in bags and thrown on the floor at the station house.

FINDINGS AND ANALYSIS

The sole issue before this Court is whether Respondent searched Person A's vehicle without sufficient legal authority. Respondent testified that once the summonses were issued, a decision was made to seize the vehicle. Respondent testified that he was concerned whether he had the authority to seize vehicles in this manner, so at some point he decided to confer with the Legal Bureau to ascertain whether seizing vehicles in instances such as these was proper. Respondent did not know who he spoke to in the Legal Bureau, but he testified that the person told him that he could seize a vehicle in this instance after the issuance of a criminal court noise summons. Without a name, date or time as to who Respondent spoke to, the Court will not give credence to this statement. Respondent testified that he had seized vehicles prior to this incident and following this incident for similar infractions. He estimated that he had seized vehicles in this manner, "a couple dozen times." It must be noted that the seizure of the vehicle is not charged as misconduct in this instance.

To determine whether Respondent had a basis to search the vehicle, Patrol Guide 214-23 states in its purpose:

To enforce provisions of the New York City Administrative Code prohibiting unreasonable noise.

It goes on to state the procedure to address these complaints which include, interviewing the complainant, determining that the noise is unreasonable, attempting to correct the condition by warning the violator and issue a summons if the condition is unable to be corrected. It further explains that sound reproduction devices may be seized and vouchered and they should be marked without damaging the device to indicate the

volume at which the device was operated. It further instructs officers to bring the sound device to all court appearances.

Under the additional data portion of the Patrol Guide, it states in no uncertain terms, "Sound reproduction devices will not be seized from motor vehicles." In this instance, Respondent did not follow any of the tenets of the Patrol Guide. He did not warn Person A about the noise, he did not attempt to correct the condition by having Person A turn the music down, nor did he attempt to correct the loud music prior to the issuance of the summons. Respondent testified that he was unfamiliar with that section of the Patrol Guide. Nevertheless, he has a duty as a police officer to enforce the law and ignorance of the law is no defense to a law enforcement officer who is planning to take police action pursuant to the law. Rather than speak to Person A and advise him about parking at a fire hydrant and playing loud music, Respondent apparently did neither. There was scant evidence that he had any meaningful conversation with Person A other than when he initially asked whose vehicle it was. It is clear Person A had conversation with Schneider who issued the summons. It is possible that Respondent told Person A that he was seizing the vehicle before he actually drove off.

The Patrol Guide is clear that the sound device in a car cannot be taken. It also means that a car cannot be taken pursuant to a noise complaint. It also follows that Respondent had no legal basis to search Person A's car. For Respondent to testify that opening a glove compartment, center console, trunk and every other area of the car without the driver's permission is not a search defies logic. Respondent did not arrest Person A. Neither was Person A engaged in conduct that was going to lead to his arrest. Respondent certainly knew he was not arresting Person A and the issuance of the

summonses did not allow him to search the car even though Respondent told Castillo that he was seizing the vehicle as “arrest evidence.” The Patrol Guide also notes that in noise complaints, “the volume control [on the device] shall be marked without damaging the property to indicate the volume at which the device was being operated.” Respondent acknowledged during cross-examination that he would not be able to establish the volume issue with a car. Respondent had an obligation to refer to the language of the Patrol Guide with respect to the noise issue.

Even if Respondent had not seized the vehicle, he still was without a legal basis to search the vehicle. Courts in this state have held that a police officer must have probable cause of a crime to go into a citizen’s car and inspect his personal effects. (See People v. Torres, 74 NY2d 224, 227 (1989). Issuance of a summons for a noise violation does not rise to the level of a crime. The Supreme Court of the United States has held that where a citizen is issued a citation rather than arrested, pursuant to the Fourth Amendment (search and seizure law), a police officer is not authorized to conduct a full search of a car without the consent of the citizen and absent probable cause. (Knowles v. Iowa, 525 U.S. 113 (1998). Respondent exercised poor judgment in this case by doing a full car search and seizing a vehicle for a noise violation. His ignorance of the language of the Patrol Guide is no defense under these circumstances, particularly as a 12-year police officer.

Accordingly, Respondent is found Guilty.

PENALTY

In order to determine an appropriate penalty, Respondent’s service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974).

Respondent was appointed to the Department on July 1, 2002. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

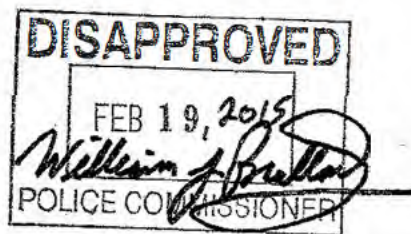
Respondent has been found Guilty of searching Person A's car without sufficient legal authority. The CCRB attorney asked for a penalty of the forfeiture of ten vacation days. The Court agrees. In Disciplinary Case Nos. 73507/98 and 73506/98 (December 10, 1999) a nine-year sergeant and eleven-year police officer, both with no prior disciplinary record each forfeited ten vacation days for wrongfully searching the glove compartment and trunk of a vehicle. The Court found that there was neither probable cause nor was an arrest or inventory of the car being made.

Accordingly, it is recommended that Respondent forfeit ten vacation days.

Respectfully submitted,

Claudia Daniels-DePeyster CDP

Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials



POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER TIMOTHY KRAFT
TAX REGISTRY NO. 930504
DISCIPLINARY CASE NO. 2013-10071

In 2011 and 2013, Respondent received an overall rating of 4.0 "Highly Competent" on his annual performance evaluations. In 2012, he received a rating of 4.5 "Extremely Competent/ Highly Competent." Respondent has received one Commendation in his career to date.

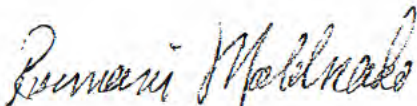
[REDACTED]

[REDACTED]

On June 10, 2013 Respondent was placed on Level I Force Monitoring for receiving three or more CCRB complaints in one year.

Respondent has no prior formal disciplinary record.

For your consideration.

 CDP
Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials